

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE GLIDDEN COMPANY;  
CHEMCENTRAL CORPORATION; and  
SEQUA CORPORATION

Defendants.

Civil No.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. §§ 9606 and 9607. The United States seeks the recovery, pursuant to CERCLA Section 107, 42 U.S.C. § 9607, of certain past costs incurred responding to the release or threat of release of hazardous substances at the Marina Cliffs/Northwestern Barrel Superfund Site (the “Site”) in South Milwaukee, Wisconsin through March 31, 2000. The United States also seeks to recover statutory penalties, pursuant to CERCLA Section 106, 42 U.S.C. § 9606, for defendants’ failure to comply with administrative orders issued by EPA. The United States further seeks prejudgment interest, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 106, 107, and 113(b), 42 U.S.C. §§ 9606, 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the claims arose in this district and the threatened and actual releases of hazardous substances occurred in this district.

### **DEFENDANTS**

4. Defendant The Glidden Company (“Glidden”) is a wholly-owned subsidiary of ICI American Holdings, Inc., a Delaware corporation with its principal place of business located at 10 Finderne Avenue, Bridgewater, New Jersey.

5. Defendant Chemcentral Corporation (“Chemcentral”) is an Illinois corporation with its principal place of business located at 7050 West 71st Street, Bedford Park, Illinois. Chemcentral is the successor in liability to Wisconsin Solvents & Chemicals (“Wisconsin Solvents”).

6. Defendant Sequa Corporation (“Sequa”) is a Delaware Corporation with its principal place of business located at 200 Park Avenue, New York, New York. Sequa is the successor in liability to the Tousey Varnish Company (“Tousey”).

7. Each of the Defendants is a “person” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

8. Each of the Defendants is a person (or a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of

hazardous substances owned or possessed by that Defendant at the Site, within the meaning of Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

#### **BACKGROUND**

9. The Marina Cliffs/Northwestern Barrel Site covers approximately 18 acres of land south of Drexel Street and east of Fifth Avenue along Lake Michigan in South Milwaukee, Wisconsin.

10. From approximately 1941 to 1965, Northwestern Barrel Company operated the Site as a facility to recondition used drums and containers.

11. During the operation of the barrel facility, Glidden sent hazardous substance-containing drums to the Site. The drums contained paint, solvents, and lacquers, among other substances.

12. During the operation of the barrel facility, Wisconsin Solvents sent hazardous substance-containing drums to the Site. The drums contained chemicals, solvents, and naphtha, among other substances.

13. During the operation of the barrel facility, Tousey sent hazardous substance-containing drums to the Site. The drums contained paint and varnish, among other substances.

14. At a December 7, 1994 site assessment, representatives from EPA found approximately 50 rusted and open 55-gallon drums. Representatives found reddish-orange, blue, and green substances covering the soil in some areas of the Site. Representatives also found two fenced pits containing a dark, oily, sludge-like material. The materials on the soil and in the pits contained hazardous substances.

15. “Hazardous substances” as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been “released” within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), at the Site, or there have been threats of such releases into the environment within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22).

16. The Site is a “facility” within the meaning and scope of CERCLA Section 9601(9), 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

17. On October 3, 1995, EPA issued a unilateral administrative order to approximately 80 parties, including Glidden, pursuant to CERCLA Section 106, 42 U.S.C. § 9606. The order required the named parties to perform specified removal activities at the Site to eliminate the imminent and substantial endangerment to public health and the environment.

18. On July 20, 1998, U.S. EPA issued a unilateral administrative order to approximately 95 parties, including all Defendants, pursuant to CERCLA Section 106, 42 U.S.C. § 9606. The order required the named parties to perform specified removal activities at the Site to eliminate the imminent and substantial endangerment to public health and the environment.

19. The United States has incurred “response costs” relating to the Site in responding to releases and threatened releases of hazardous substances at the Site. The United States made a demand for payment of its past response costs to Defendants on March 10, 2004.

**FIRST CLAIM FOR RELIEF**  
**(Recovery of Certain Past Response Costs Under CERCLA Section 107, 42 U.S.C. § 9607)**

20. Paragraphs 1-19, above, are realleged and incorporated herein by reference.

21. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part that:

- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing hazardous substances

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from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

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(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .

22. CERCLA Section 113(g)(2), 42 U.S.C. 9613(g)(2), provides in pertinent part:

(2) Actions for recovery of costs

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In any . . . action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

23. Each of the Defendants is a person (or a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, within the meaning of CERCLA Section 107(a)(2) or (3), 42 U.S.C. § 9607(a)(2) or (3).

24. There has been a release of hazardous substances at and from the Site.

25. The actions taken by the United States in connection with the Site constitute “response” actions within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), in connection with which the United States has incurred costs.

26. As of March 31, 2000, the United States had incurred \$1,106,271.82 in unreimbursed response costs relating to the Site in “response” to the release or threatened release

of hazardous substances at and from the Site, including the costs of “removal” actions performed or directed by EPA as those terms are defined in CERCLA Sections 101(23) and 101(25), 42 U.S.C. §§ 9601(23) and (25).

27. All such response costs incurred by the United States were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

28. The United States has satisfied any conditions precedent to undertaking response actions, to incurring response costs, and to recovering those costs under CERCLA Section 107, 42 U.S.C. § 9607.

29. The Defendants are jointly and severally liable to the United States under CERCLA Sections 107(a)(3) and 113(g)(2), 42 U.S.C. §§ 9607(a)(3) and 9613(g)(2), for all such unreimbursed past costs incurred by the United States in responding to the releases and/or threats of releases of hazardous substances at the Site, including prejudgment interest on such costs.

#### **SECOND CLAIM FOR RELIEF**

##### **(Penalties against Glidden under CERCLA Section 106, 42 U.S.C. § 9606)**

30. Paragraphs 1-29, above, are realleged and incorporated herein by reference.

31. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides in pertinent part that:

- (a) The President may . . . issu[e] such orders as may be necessary to protect public health and welfare and the environment.
- (b)(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order . . . may . . . be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

32. Pursuant to CERCLA Section 115, 42 U.S.C. § 9615, the President has delegated to the Administrator of EPA the authority to issue orders under CERCLA Section 106, 42 U.S.C. § 9606.

33. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, EPA has adjusted the penalties for failure to comply with CERCLA administrative orders as follows: the maximum penalty is \$25,000 per day for violations occurring up until January 30, 1997; \$27,500 for violations occurring from January 30, 1997 to March 15, 2004; and \$32,500 for violations after March 15, 2004.

34. U.S. EPA issued a unilateral order on October 3, 1995 to Glidden and other parties, pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).

35. Glidden failed or refused to comply with that order. That failure or refusal to comply continued from at least October 3, 1995 until at least January 30, 2004, when other parties completed the final report required by that order. Glidden's violation of CERCLA Section 106, 42 U.S.C. § 9606, as set forth in this Claim for Relief, makes Glidden subject to civil penalties of up to: (i) \$25,000 per day for each violation on or before January 30, 1997; (ii) \$27,500 for each violation between January 30, 1997 and March 15, 2004; and (iii) \$32,500 per day for each violation occurring after March 15, 2004.

### **THIRD CLAIM FOR RELIEF**

#### **(Penalties against all Defendants under CERCLA Section 106, 42 U.S.C. § 9606)**

36. Paragraphs 1-35, above, are realleged and incorporated herein by reference.

37. U.S. EPA issued a unilateral order on July 20, 1998 to all Defendants and other parties, pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).

38. The Defendants failed or refused to comply with that order. That failure or refusal to comply has continued from at least July 20, 1998 until at least July 18, 2000, when other parties submitted a completion report for the work required by that order. The Defendants'

individual violations of CERCLA Section 106, 42 U.S.C. § 9606, as set forth in this Claim for Relief, makes them subject to civil penalties of up to: (i) \$25,000 per day for each violation on or before January 30, 1997; (ii) \$27,500 for each violation between January 30, 1997 and March 15, 2004; and (iii) \$32,500 per day for each violation occurring after March 15, 2004.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Enter judgment in favor of the United States against each Defendant under CERCLA Section 107(a), 42 U.S.C. § 9607(a), finding each Defendant jointly and severally liable for all unreimbursed past costs incurred through March 31, 2000, including prejudgment interest, that the United States has incurred in responding to releases and/or threatened releases of hazardous substances at and from the Site;

B. Enter judgment in favor of the United States, pursuant to CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1), finding each Defendant liable for statutory penalties for failure to comply with U.S. EPA unilateral orders.

C. Award the United States its costs of this action; and



D. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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Date: \_\_\_\_\_

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